

CRIMINAL MISC.APPLICATION No 1322 of 1998

Hon'ble MR.JUSTICE A.K.TRIVEDI

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5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

STATE OF GUJARAT

Mr.AJ Desai, APP for Respondent No. 1

Heard Petitioner Babaldas B. Chavda in person.
Rule. Learned Advocate Mr. A.J. Desai waives service of
Rule on behalf of the respondent. The petitioner has
challenged legality and propriety of the order passed by
learned Sessions Judge, Mehsana, dated 6.3.1998, in the

matter of Criminal Misc. Application No. 56 of 1998.

2. The petitioner has contended that the criminal cases bearing Case No. 1023 of 1996 and 1015 of 1994 are filed in the court of JMFC, Visnagar, District Mehsana. The petitioner as complainant of said matter, had moved application before learned Sessions Judge, Mehsana, dated 17.2.1997, contending that learned JMFC who is the Presiding Officer of the Court in the said criminal case happens to be the sister of the accused. That petitioner as the President of Harijan Kelavni Mandal, Visnagar, has filed the said case and the petitioner apprehends that he would not get justice as Presiding Officer of the Court is related to the accused. The petitioner has moved said Application bearing Case No. 1030 of 1996. However, petitioner has stated in the application that there is another case against the same accused bearing Case No. 1015 of 1994. That both the cases are cognate matters and thereby petitioner believed that both the cases shall be simultaneously transferred as per his prayer. It appears that vide order dated 17.2.1997, learned Sessions Judge has allowed the application, however, in the operative part of the order, it is stated that Criminal Case No. 1015 of 1994 stands transferred from the Court of JMFC, Kumari PV Pandya to the court of JMFC, Solanki. That thereafter, it further appears that on 4.10.1997, the petitioner moved another application Exhibit 2 in the Criminal Case No. 1026 of 1996 requesting the JMFC, Visnagar, to transfer the proceedings of Criminal Case No. 1015 of 1994 to the court of JMFC, Solanki on the ground that cognate matter 1023 of 1996 has already been transferred by learned Sessions Judge. It appears that learned JMFC has rejected the application and being aggrieved by the said order, petitioner preferred another criminal application being Misc. Criminal Application No. 56 of 1998 in the court of Sessions Judge, Mehsana, contending that learned JMFC, Visnagar has committed a civil contempt by passing contrary order in the proceedings of Criminal case No. 1023 of 1996 which is transferred by learned District Judge to the Court of JMFC - Solanki. That thereby, proceedings should be initiated against the Magistrate. That learned Sessions Judge has passed speaking order dated 6.3.1998 and had rejected the application on merits holding that petitioner ought to have filed a separate Application for transfer of another matter and merely by passing order in Criminal Application No. 1030 of 1996, the another case cannot automatically stand transferred. Further more, learned JMFC, Visnagar, had no jurisdiction or power under Section 408 of the Cr.P.C. to take any decision for transferring of case pending before the court. The

petitioner has challenged said order of Sessions Judge in the present proceedings and has prayed that impugned order dated 6th March, 1998 of learned Sessions Judge be set aside, quashed and appropriate orders giving justice to the petitioner may be passed.

3. The party in person has filed written submission which is taken on record. When it was explained to the party in person that petitioner ought to have made a separate prayer in the application moved before the Sessions Judge for transfer of Criminal Case No. 1023 of 1996 from the court of JMFC, Visnagar, to any other court on the same line of Criminal Misc. Case No. 1030 of 1996 which was filed by him for transfer of Criminal Case No. 1015 of 1994, the petitioner has stated at the Bar that petitioner being a layman and coming from lower strata of the society, cannot afford to retain a lawyer and multiplicity of proceedings, is likely to cause hardship to him and, therefore, any just and proper order may be passed.

4. Having given my anxious thought to the facts and circumstances apparent from the material, in my opinion, learned JMFC, Visnagar as well as learned Sessions Judge, Mehsana, could have resolved the problem by taking a very simple approach and transferring the proceedings of Criminal Case No. 1023 of 1996 from the Court of JMFC, Visnagar Kumari PV Pandya to any other competent court. It is true that learned Sessions Judge is justified on the reasons stated in the order dated 6.3.1998 below Exhibit 5 in Criminal Misc. Application No. 56 of 1998. However, said order does not resolve the problem arising from the contention raised by the petitioner by application dated 4.10.1997 Exhibit 2 to JMFC, Visnagar, in the proceedings of Criminal Case No. 1023 of 1996 and Criminal Proceedings No. 56 of 1998. Judicial Officer while discharging the judicial functions should take a rationale approach when a litigant has raised apprehension that on account of accused being related to the Presiding Officer, the complainant is not likely to get justice, the Judicial Officer ought to have suo motu recluse from the matter and should have transferred the matter to some other court.

5. On the basis of the above stated discussion, though the petition technically cannot succeed on the ground on which it is filed, the petition is allowed only on the limited point directing the learned Sessions Judge, Mehsana to transfer the proceedings of Criminal Case No. 1023 of 1996 pending in the court of JMFC, Visnagar to the court of JMFC, Solanki and to direct the

Court of JMFC - Solanki to conduct the said matter along
with Criminal Case No. 1015 of 1994. Rule is made
absolute accordingly. No order as to costs.

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